

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES ELLIS,

Plaintiff,

v.

KERN MEDICAL CENTER, et al.,

Defendants.

1:23-cv-01344-NODJ-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
THIS ACTION FOR PLAINTIFF'S
FAILURE TO OBEY COURT ORDERS
AND FAILURE TO PROSECUTE**

(Doc. 8)

**ORDER GRANTING PLAINTIFF'S
REQUEST FOR AN EXTENSION OF
TIME WITHIN WHICH TO COMPLY
WITH THE FIRST SCREENING ORDER**

**ORDER DENYING PLAINTIFF'S
REQUEST TO APPOINT COUNSEL**

(Doc. 9)

Plaintiff Charles Ellis is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

Plaintiff filed his complaint on September 11, 2023. (Doc. 1.) On January 16, 2024, the Court issued its First Screening Order. (Doc. 6.) The Court found the complaint fails to state a claim upon which relief can be granted. (*Id.* at 4-12.) Plaintiff was granted leave to file a first amended complaint, curing the deficiencies identified in the order, or, alternatively, a notice of

1 voluntary dismissal, within 21 days. (*Id.* at 12-13.)

2 On February 21, 2024, after more than 21 days passed without Plaintiff having filed a first
3 amended complaint or a notice of voluntary dismissal, the Court issued Findings and
4 Recommendations to dismiss the action for Plaintiff's failure to comply with the Court's
5 screening order and failure to prosecute. (Doc. 8.)

6 On March 11, 2024, Plaintiff filed a document titled "Motion: Requesting Time
7 Extension, and Consideration for Counsel at This Time Be Appointed." (Doc. 9.) The Court
8 construes this filing to be objections to the Court's findings, a request for an extension of time to
9 respond to the Court's screening order, and a request for the appointment of counsel.

10 **II. DISCUSSION**

11 Plaintiff's Objections

12 Plaintiff contends he did not receive the Court's First Screening Order. (Doc. 9 at 1-3.)
13 Plaintiff asserts his legal mail is being withheld "or thrown away" in retaliation for his filing
14 several lawsuits in this Court involving officials at the Kern County jail where he is presently
15 incarcerated. (*Id.* at 3-5.) He asks the Court to "resend" the screening order. (*Id.* at 1.)

16 The Court will vacate its Findings and Recommendations and will direct the Clerk of the
17 Court to provide Plaintiff with a copy of the First Screening Order as a one-time courtesy.

18 Plaintiff's Request for an Extension of Time

19 Plaintiff requests an extension of time to respond to the screening order. (Doc. 9 at 1.) He
20 asserts it was never his intention to "waste the Court's time, or 'lollygag' around." (*Id.*)

21 Plaintiff will be granted 21 days from the date of service of this order within which to
22 respond to the Court's First Screening Order. Plaintiff should carefully review the screening order
23 as it identifies the deficiencies in Plaintiff's original complaint and the legal standards applicable
24 to the claims Plaintiff seeks to assert in this action.

25 Plaintiff's Request for the Appointment of Counsel

26 Plaintiff asks this Court to appoint counsel to represent him in this action. (Doc. 9 at 2.)
27 Plaintiff identifies two other he has filed, and that are now pending, in this Court: (1) case number
28 1:22-cv-01209 and (2) case number 1:22-cv-00436. (*Id.* at 3.) He asks the Court to appoint

1 counsel because his is incarcerated, is not knowledgeable in the law, and would be better served
2 by the assistance of an attorney. (*Id.* at 2-6.)

3 To the extent Plaintiff asks the Court to appoint him counsel in other actions assigned to
4 other judges in this Court, the Court will not do so.¹ The Court will consider Plaintiff's request
5 only as it pertains to *this* action.

6 *Legal Standards & Analysis*

7 Plaintiffs do not have a constitutional right to appointed counsel in § 1983 actions. *Rand v.*
8 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d 952, 954
9 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28 U.S.C. §
10 1915(e)(1). *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989). However, in
11 “exceptional circumstances,” the Court may request the voluntary assistance of counsel pursuant
12 to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

13 Since the Court has no reasonable method of securing and compensating counsel, the
14 Court will seek volunteer counsel only in extraordinary cases. In determining whether
15 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on
16 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
17 complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks &
18 citations omitted).

19 The Court must evaluate the likelihood of Plaintiff's success on the merits of his claims.
20 Here, Plaintiff's complaint was screened, and the Court determined it failed to state a claim upon
21 which relief could be granted. (*See* Doc. 6.) At this stage of the proceedings, the Court cannot
22 evaluate the likelihood of Plaintiff's success on the merits. *See, e.g., Porter v. Rivas*, No. 1:23-cv-
23 00105-ADA-CDB (PC), 2023 WL 4765492, at *1 (E.D. Cal. July 26, 2023) (“A likelihood of
24 success on the merits determination is not the same as that required at screening; at screening, the
25 Court is tasked with determining whether a plaintiff has sufficiently and plausibly alleged a cause
26 of action or claim entitling the plaintiff to relief. The merits of the allegations are not tested, for

27 ¹ Plaintiff must file any request or motion for the appointment of counsel in each case he seeks such
28 assistance. The judges assigned to those other cases will decide any such request or motion.

1 the Court is to consider factual allegations to be true for purposes of screening"); *Scally v.*
2 *Velasquez*, No. 22-CV-140 JLS (MDD), 2022 WL 3325916, at *6 (S.D. Cal. Aug. 11, 2022)
3 ("Because Defendants have yet to respond to the Amended Complaint, a determination regarding
4 the likelihood of success on the merits or Scally's ability to prosecute this matter is premature").

5 The Court must also evaluate Plaintiff's ability to articulate his claims pro se in light of
6 the complexity of the legal issues involved. Here, while the Court found Plaintiff had failed to
7 state a claim upon which relief can be granted (see Doc. 6), the Eighth Amendment medical
8 claims Plaintiff intended to present are not complex. *Bonin v. Vasquez*, 999 F.2d 425, 428–29 (9th
9 Cir. 1993) (while Plaintiff may have limited knowledge of the law, the Court does not find the
10 issues in this case "so complex that due process violations will occur absent the presence of
11 counsel"); *Maldanado v. Merritt*, No. 1:23-cv-00482-JLT-SKO PC, 2023 WL 6751114, at *3
12 (E.D. Cal. Oct. 12, 2023) ("Eighth Amendment deliberate indifference to serious medical needs
13 claims are not complex"); *Lane v. Beach*, No. 1:20-cv-00147-JLT-GSA-PC, 2023 WL 4936300,
14 at *1 (E.D. Cal. Aug. 2, 2023) ("whether defendant Beach was deliberately indifferent to
15 Plaintiff's serious medical needs ... is not complex"); *Ireland v. Solano County Jail*, No. CV-08-
16 2707-LRS, 2010 WL 367776, at *1 (E.D. Cal. Jan. 26, 2010) (same). Therefore, at this stage of
17 the proceedings, the Court finds Plaintiff is able to articulate his claims in light of their
18 complexity.

19 Next, neither incarceration nor indigency are exceptional circumstances warranting the
20 appointment of counsel. *See Suarez v. Clark*, No. 1:22-cv-00160-JLT-SAB (PC), 2024 WL
21 477982, at *1 (E.D. Cal. Jan. 25, 2024) ("the Court has 'repeatedly' held incarceration's
22 challenges on litigation do not constitute an exceptional circumstance. [] If Plaintiff's
23 incarceration was an exceptional circumstance, any prisoner would be entitled to counsel");
24 *Dijkstra v. Campos*, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022)
25 ("Plaintiff's indigence does not qualify 'as an exceptional circumstance in a prisoner civil rights
26 case'"); *Gipbsin v. Kernan*, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2 (E.D. Cal. Jan.
27 25, 2021) ("Plaintiff's inability to afford counsel has no bearing on either his likelihood of success
28 on the merits or his ability to articulate his claims pro se"); *Callender v. Ramm*, No. 2:16-cv-0694

1 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018) (same); *Montano v. Solomon*, No.
 2 2:07-cv-0800 KJN P, 2010 WL 2403389, at *2 (E.D. Cal. June 11, 2010) (same).

3 The fact that an attorney would be better prepared to litigate and try this action does not
 4 amount to an exceptional circumstance warranting the appointment of counsel. *See Rand*, 113
 5 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied
 6 appointment of counsel despite fact that pro se prisoner “may well have fared better—particularly
 7 in the realm of discovery and the securing of expert testimony”); *Courtney v. Kandel*, No. 2:18-
 8 CV-2052-KJM-DMC-P, 2020 WL 1432991, at *1 (E.D. Cal. Mar. 24, 2020) (challenges
 9 conducting discovery and preparing for trial “are ordinary for prisoners pursuing civil rights
 10 claim” and cannot form the basis for appointment of counsel); *Thornton v. Schwarzenegger*, No.
 11 10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D. Cal. Jan. 11, 2011) (explaining that
 12 “[f]actual disputes and anticipated cross-examination of witnesses do not indicate the presence of
 13 complex legal issues warranting a finding of exceptional circumstances”). Also, there is little
 14 doubt most pro se litigants “find it difficult to articulate [their] claims,” and would be better
 15 served with the assistance of counsel. *Wilborn*, 789 F.2d at 1331. For this reason, in the absence
 16 of counsel, federal courts employ procedures which are highly protective of a pro se litigant’s
 17 rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se complaint to less stringent
 18 standard) (per curiam). In fact, where a plaintiff appears pro se in a civil rights case, the court
 19 must construe the pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim-*
 20 *Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal
 21 construction is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258,
 22 1261 (9th Cir. 1992). Thus, where a pro se litigant can “articulate his claims” in light of the
 23 relative complexity of the matter, the “exceptional circumstances” which might require the
 24 appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; accord *Palmer v. Valdez*, 560
 25 F.3d 965, 970 (9th Cir. 2009).

26 “Circumstances common to most prisoners, such as a deficient general education, lack of
 27 knowledge of the law, mental illness and disability, do not in themselves establish exceptional
 28 circumstances warranting appointment of voluntary civil counsel.” *Jones v. Kuppinger*, No. 2:13-

1 cv-0451 WBS AC P, 2015 WL 5522290, at *3-*4 (E.D. Cal. Sept. 17, 2015). Nor, for example, is
2 limited access to the law library an exceptional circumstance because limited law library access is
3 a circumstance common to most prisoners. *Maldanado v. Merritt*, No. 1:23-cv-00482-JLT-SKO
4 PC, 2023 WL 6751114, at *3 (E.D. Cal. Oct. 12, 2023); *Escamilla v. Oboyle*, No. 2:22-cv-2038
5 KJM AC P, 2023 WL 2918028, at *1 (E.D. Cal. Apr. 12, 2023); *Faultry v. Saechao*, No. 2:18-cv-
6 1850 KJM AC P, 2020 WL 2561596, at *2 (E.D. Cal., May 20, 2020).

7 In sum, the Court finds no exceptional circumstances warranting the appointment of
8 counsel in this matter. *Rand*, 113 F.3d at 1525.

9 **III. CONCLUSION AND ORDER**

10 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

- 11 1. The Findings and Recommendations issued February 21, 2024 (Doc. 8) are
12 **VACATED**;
- 13 2. The Clerk of the Court is **DIRECTED** to send Plaintiff a copy of the First Screening
14 Order (Doc. 6) as a one-time courtesy, as well as a blank civil rights complaint form;
- 15 3. Plaintiff's request for an extension of time within which to respond to the Court's
16 screening order (Doc. 9) is **GRANTED**. Plaintiff **SHALL** file either a first amended
17 complaint or a notice of voluntary dismissal **within 21 days** of the date of service of
18 this order; and
- 19 4. Plaintiff request for the appointment of counsel is **DENIED**.

20 **Plaintiff is advised that a failure to comply with this order will result in a**
21 **recommendation that this action be dismissed for a failure to obey court orders.**

22 IT IS SO ORDERED.

23 Dated: March 13, 2024

24 /s/ Sheila K. Oberto
25 UNITED STATES MAGISTRATE JUDGE